



PUBLIC NOTICE

Federal Communications Commission
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DA 04-660
Released: March 9, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF ICG CHOICECOM, L.P. AND ICG TELECOM GROUP, INC. BY Z-TEL COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-3

Comments Due: March 23, 2004
Reply Comments Due: March 30, 2004

On March 2, 2004, ICG ChoiceCom, L.P. (ChoiceCom), ICG Telecom Group, Inc. (Telecom Group) (together, "ICG") and Z-Tel Communications, Inc. (Z-Tel), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requested that the Commission grant authority for the transfer of certain customers of ICG in Texas to Z-Tel.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the applicants is dominant with respect to any service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214. Applicants previously filed a similar application to transfer certain customers in California and Ohio. *See Notice of Streamlined Domestic 214 Applications Granted*, WC Docket Nos. 03-262, 04-2, 04-3, Public Notice, DA 04-449 (rel. Feb. 23, 2004).

² Applicants are also filing an application for transfer of control associated with authorizations for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.").

ChoiceCom, a Delaware limited partnership, is a subsidiary of Telecom Group. Telecom Group, a Colorado corporation, is an indirect wholly owned subsidiary of ICG Communications, Inc. The company's managed network offers numerous points of presence nationwide covering over 4000 rate centers. ICG's service offerings include local and long distance telecommunications services, data services, information services, and other communications solutions. In Texas, ChoiceCom offers local exchange and intrastate interexchange telecommunications services, as well as interstate and international long distance services. Telecom Group also offers interstate and international long distance services in Texas. ICG's services are primarily offered to medium to large-sized businesses, Internet service providers, interexchange carriers, and other telecommunications carriers.

Z-Tel, a Delaware corporation, offers local and long distance telecommunications services to residential and business customers in most states. Z-Tel is wholly owned by Z-Tel Technologies, Inc., a publicly traded corporation.

Applicants state that, for a variety of business and strategic reasons, ICG has determined to restructure, rationalize, and realign its business plan and operations to existing market conditions by decommissioning certain collocation sites serving a small number of its customers in Texas. According to the Applicants, the areas, products, and customers serviced by these sites cannot be economically moved to other ICG services. As such, ICG has entered into an agreement with Z-Tel to transition these customers to Z-Tel services. Applicants state that, with this proposed transition, customers will receive similar rates, features, terms, and conditions of service, and will continue to enjoy top quality services with performance that meets or exceeds that of the services they currently have. Further, they assert that no other ICG services will be affected and ICG will continue operations in Texas. Finally, Applicants state that the transaction is designed to streamline the operations of ICG while strengthening Z-Tel's competitive market position.

The Applicants assert that the proposed transaction would serve the public interest because it would (1) allow Z-Tel to enhance its competitive position by increasing its customer base; (2) allow ICG to enhance its competitive position by allowing it to streamline its operations; and (3) allow current transfer customers of ICG to maintain continuity of service by receiving the same services from Z-Tel at the same or better rates, features, terms and conditions of services that they currently receive from ICG.

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments before or on March 23, 2004** and **reply comments before or on March 30,**

2004.⁴ Unless otherwise notified by the Commission, Applicants are permitted to transfer on the 31st day after the date of this notice.⁵ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street,

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;

- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: christi.shewman@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: christopher.killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Christi Shewman at (202) 418-1686.

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